



In the Matter of:

CARLOS E. BAENA,

ARB CASE NO. 03-008

COMPLAINANT,

ALJ CASE NO. 02-AIR-4

v.

DATE: January 10, 2003

ATLAS AIR, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Stuart A. Goldstein, Esq., *Law Offices of Stuart A. Goldstein, Miami, Florida*

For the Respondent:

Gary T. Stiphany, Esq., *Lucio, Branstein, Garbett & Stiphany, Miami, Florida*

**FINAL ORDER APPROVING SETTLEMENT
AND DISMISSING THE CASE**

Carlos E. Baena filed a complaint alleging that Atlas, Air, Inc., (Atlas) violated the employee protection provisions of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), 49 U.S.C.A. § 42121 (West 1997) and the implementing regulations at 29 C.F.R. Part 1979 (2002). Baena seeks approval of a settlement agreement and dismissal of his pending claim with prejudice.

BACKGROUND

On September 30, 2002, a Department of Labor Administrative Law Judge (ALJ) issued a Decision and Order Denying Relief (D. & O.) finding that Baena had failed to establish that Atlas had retaliated against him in violation of AIR 21's whistleblower protection provisions. Consequently, the ALJ denied Baena's complaint.

Pursuant to 29 C.F.R. § 1979.110, Baena filed a Petition for Review with the Administrative Review Board (Board). In response, the Board issued a Notice of Appeal and Order Establishing Briefing Schedule. Baena subsequently filed a copy of the parties' "Settlement Agreement" and "Complainant's Notice of Dismissal with Prejudice."

DISCUSSION

Pursuant to AIR 21 ' 42121(b)(3)(A), "[a]t any time before issuance of a final order, a proceeding under this subsection may be terminated on the basis of a settlement agreement entered into by the Secretary of Labor, the complainant, and the person alleged to have committed the violation." Under regulations implementing AIR 21, the parties may settle a case at any time after the filing of objections to the Assistant Secretary's preliminary findings if the participating parties agree to a settlement and such settlement is approved by the administrative law judge if the case is before the judge, or by the Board if a timely petition for review has been filed with the Board." 29 C.F.R. ' 1979.111(d)(2). The regulations direct the parties to file a copy of the settlement with the administrative law judge or the Board, as the case may be." *Id.* In this case, at the time the parties reached a settlement, the ALJ had issued the D. & O. and Baena had filed a petition for review with this Board. Therefore, it is appropriate for us to review the settlement agreement.

Having reviewed the settlement agreement submitted by Baena, we find that the agreement is a fair, adequate, and reasonable settlement of the complaint.

CONCLUSION

We **APPROVE** the agreement and **DISMISS** the case with prejudice.

SO ORDERED.

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge